

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-431-T - ORDER NO. 2010-490

AUGUST 27, 2010

IN RE: Application of Kenneth Landert d/b/a)	ORDER DENYING
Kountry Trans. (f/k/a Kountry Limo) for a)	RECONSIDERATION
Class C (Charter) Certificate of Public)	AND/OR REHEARING
Convenience and Necessity for Operation of)	
Motor Vehicle Carrier)	

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition of Kenneth Landert d/b/a Kountry Trans. ("Landert" or "Petitioner") for Reconsideration and/or Rehearing in connection with Order No. 2010-191, in which we denied the Petitioner's Application for a Class C Charter Certificate.

Landert claims that the evidence demonstrates that he is fit, willing, and able to provide the services for which he sought certification. He argues that his current driving record shows a cumulative adjusted total of only one point, and that his current driving record, not his driving history, should be controlling. He further argues that because the Commission does not routinely conduct detailed inquiries into the driving histories of applicants for motor carrier certificates, the Commission's reliance upon the Applicant's poor driving history to support denial of the certificate in this case is arbitrary.

Landert also argues that the Commission should not have credited the testimony of the witnesses presented by the Intervenor in opposition to the Application. He asserts

that testimony of the Intervenor's witnesses was self-serving and without corroboration, and that the Commission must therefore discount this testimony.

Finally, Mr. Landert proposes that the Commission permit him to operate as a Class C Charter carrier under probationary status.

We reject the Petition for Reconsideration and/or Rehearing. We further decline to permit Landert to operate as a probationary motor vehicle carrier.

With regard to Landert's first assertion, we disagree that our action in denying the certificate was in any way arbitrary. The fact that Landert has taken measures to reduce his point total does not change his uncontroverted history of accidents and suspensions. Whether or not Landert's current point total reflects it, his history raises serious safety concerns. Landert's claim – that he should be granted a certificate in spite of this history because the driving histories of other applicants are not normally reviewed in the same level of detail as his was here – is unavailing. In this case, an Intervenor with actual personal knowledge of Landert's driving history came forward without objection and presented relevant evidence of his lack of fitness. To bar the Commission from considering relevant evidence presented by an Intervenor simply because such evidence might not have been discovered in the normal course absent the participation of the Intervenor in the proceedings would be a nonsensical and absurd result. Such a rule would render intervention virtually useless. It would also be detrimental to public safety.

With regard to Landert's assertion that the Commission is bound to discount the testimony of the Intervenor's witnesses as self-serving, we are similarly unconvinced. Most testimony presented to us or to any tribunal is self-serving. The determination we

must make is not whether the testimony is self-serving, but rather, whether the testimony is credible. We are entitled to weigh testimony, evaluate credibility, and give the evidence whatever weight we deem appropriate in arriving at findings of fact. In this case, we found Landert's testimony in support of his own application to be less credible than that of the Intervenor's witnesses. We acted squarely within our authority as the finders of fact. Because the Petitioner does not agree with our assessment is not reason enough to require reconsideration or rehearing.

Finally, we decline Petitioner's request that we grant probationary status to the Applicant. We view this decision as one which is consistent with the important interest of public safety.

Accordingly, we deny the Petition for Reconsideration and/or Rehearing in its entirety.

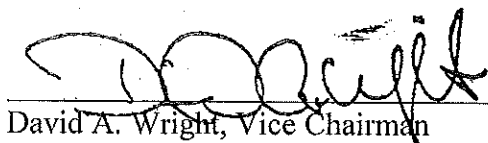
This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



John E. Howard, Chairman

ATTEST:



David A. Wright, Vice Chairman

(SEAL)